IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 128 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ZEUS AIR SERVICES PVT. LTD.

Versus

TOPLINE SHOES LTD.

Appearance:

1. COMPANY PETITION No. 128 of 1999

NANAVATI ASSOCIATES for Petitioner No. 1

PARTY-IN-PERSON for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 11/08/2004

ORAL JUDGEMENT

This petition is filed under Section 433 (e) read with Section 434 of the Companies Act, 1956 for winding up of the respondent Company. The petitioner has to recover a sum of Rs. 2,91,092/-. Despite statutory

notice having been served on the respondent Company, the amount has not been paid and hence, the present petition was filed. The petition was admitted on 12.09.2001 and the order regarding advertisement was deferred till 28.09.2001.

2. Being aggrieved by the said order of admission, the respondent Company has filed O.J. Appeal No. 02 of 2002 before this Court. The main contention raised by the respondent Company before the Division Bench was that the claim of the petitioner is barred by limitation as the invoices for the service rendered to the respondent Company was submitted on March 15, 1995 whereas the Company Petition No. 128 of 1999 for winding up was filed in May, 1999. Accepting the said contention, the Division Bench has prima facie expressed the opinion that Company Petition No. 128 of 1999 was itself time barred. However, it would be open for the respondent Company to raise the question of limitation before the learned Company Judge in the proceedings of Company Petition No. 128 of 1999. Before the Division Bench, it was also submitted on behalf of the respondent Company that pursuant to the order dated 12.09.2001 passed by the learned Company Judge, advertisement for winding-up for the respondent Company was already published in the Newspaper on 25.02.2002. The Division Bench has, therefore, passed an order to the effect that in pursuance of the advertisement dated 25.02.2002, further proceedings were stayed till the final disposal of the Company Petition No. 128 of 1999. In the present petition, the respondent Company has filed its reply wherein specific defence was raised to the effect that the alleged claim of the petitioner is time barred as per the provisions contained in the Limitation Act and the petitioner has misled this Court by way of not making the mandatory statement in the petition in this connection.

3. For the last several occasions, this petition is appearing on the final hearing board. However, neither the petitioner nor its advocate nor the respondent Company nor the party-in-person remained present. The petition is already listed 43 times and it is of the year 1999.

4. After going through the papers including the memo of petition, documents attached therewith as well as the reply filed by the respondent Company, the Court is of the view that the petition is barred by limitation as the three invoices which are referred to in the memo of the petition are Invoices Nos. 41540, 42379 and 42772 dated 31.01.1995, 06.03.1995 and 15.03.1995 for Rs. 42,744/-,

1,69,668/- and Rs. 78,680/- respectively. The respondent Company has issued Cheque Nos. 184252, 805416 and 805417 dated 05.04.1995, 27.04.1995 and 27.04.1995 for Rs. 42,744/-, 1,69,668/- and Rs. 78,680/respectively. All these cheques were deposited by the petitioner in its Bank Account. However, the said cheques were dishonoured for insufficiency of funds. It is not mentioned anywhere in the petition as to of which dates the said cheques were deposited and on which dates the said cheques were returned uncleared. However, it is found from the averment in the petition that the petitioner has lodged criminal complaint bearing No. 53/1995 in the Court of Metropolitan Magistrate at Bombay under Section 138 of Negotiable Instrument Act. It, therefore, gives a clear indication that the cheques were deposited in 1995 and they were returned also in 1995. If one would count the period of limitation from the end of 1995, the three years period would be over at the end of 1998. However, the present petition is filed in May, 1999. It is, therefore, barred by the period of limitation. The Division Bench has also formed prima facie opinion that the petition was barred by limitation.

5. In view of the aforesaid observations, since the petition is barred by limitation, it cannot be entertained and accordingly, the petition is dismissed. No order as to costs.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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